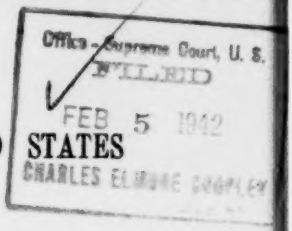

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 923

THE PHILLIPS PIPE LINE COMPANY, A CORPORATION,
Petitioner,

vs.

THE UNITED STATES.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CLAIMS AND BRIEF IN SUPPORT THEREOF.

HOWARD C. WESTWOOD,
H. D. EMERY,
RAYBURN L. FOSTER,
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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 923

THE PHILLIPS PIPE LINE COMPANY, A CORPORATION,
Petitioner,

vs.

THE UNITED STATES.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CLAIMS.

The Phillips Pipe Line Company prays that a Writ of Certiorari issue to review the decision of the Court of Claims entered in this case on October 6, 1941. Time for filing this Petition was duly extended by this Court to and including February 5, 1942 (R. 867).

Opinion Below.

The opinion below is reported in 40 F. Supp. 981.

Jurisdiction.

The judgment and order of the Court of Claims were entered on October 6, 1941. The jurisdiction of this Court is invoked under section 3(b) of the Act of February 13,

1925, 43 Stat. 939, 28 U. S. C. A. § 288(a), as amended by the Act of May 22, 1939, 53 Stat. 752, 28 U. S. C. A. § 288(b).

Statute Involved.

The pertinent provisions of the Revenue Act of 1932, 47 Stat. 169, 275, are as follows:

> Sec. 731. Tax on Transportation of Oil by Pipe Line.—
>
> (a) There is hereby imposed upon all transportation of crude petroleum and liquid products thereof by pipe line * * * a tax equivalent to 4 per centum of the amount paid on or after the fifteenth day after the date of the enactment of this Act for such transportation, to be paid by the person furnishing such transportation.

As first adopted this statute was to apply only for a limited period. After successive extensions it was made permanent by sec. 502 of the Revenue Act of 1941 and now appears as section 3460 of the Internal Revenue Code.

The pertinent provisions of the Bureau of Internal Revenue ruling issued under sec. 731(a) of the Revenue Act of 1932 are:

> Transportation of natural or casinghead gasoline by pipe line is taxable. Natural or casinghead gasoline is a liquid product of crude petroleum, within the meaning of section 731 of the Revenue Act of 1932, and the transportation thereof by pipe line is subject to the tax imposed by that section of the law. * * * (S. T. 564, Internal Revenue Cumulative Bulletin XI-2, page 531)

It is to be noted that this Bureau ruling does not have the effect of a Treasury decision and is of no weight in interpreting the Act.[1]

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[1] *Biddle* v. *Commissioner*, 302 U. S. 573, 582 (1938); *Helvering* v. *New York Trust Co.*, 292 U. S. 455, 468 (1934).

Statement of Matter Involved.

The question in this case is whether the Court of Claims erred in holding that natural gasoline and butane, each manufactured from natural gas, are crude petroleum or liquid products thereof within the meaning of section 731(a) of the Revenue Act of 1932 quoted above.

Petitioner is a corporation engaged in the business of transporting, by pipe line, ordinary refinery gasoline, natural gasoline, and butane in liquid form, according to tariffs filed with the Interstate Commerce Commission under the Interstate Commerce Act. Petitioner transported these products through its pipe line. *Court of Claims Finding* 2 (R. 24). Petitioner paid taxes on the transportation of each of these three products.

With respect to the natural gasoline and butane the taxes were paid under protest, and claims for refund were duly filed and rejected. Within the proper time, petitioner sued in the Court of Claims to recover such taxes for the period June 20, 1932, to March 31, 1936. The taxes amounted to $235,367.17 with respect to the natural gasoline and $29,-407.21 with respect to the butane. *Finding* 3 (R. 25).

The refinery gasoline transported was the ordinary gasoline produced from crude petroleum at a refinery.

The natural gasoline, however, was a product very different from refinery gasoline.

They differ as to their *source,* for natural gasoline is manufactured from natural gas in a natural gasoline plant. *Finding* 14[2] (R. 28-29).

They are *physically* different, with respect to vapor pressure, distillation curve, gravity and octane number, and otherwise. Natural gasoline is more volatile and more difficult to handle, store and ship than is refinery gasoline (R. 171-173).

[2] Natural gasoline is *not* produced from crude oil, although it may be theoretically possible to produce a comparable product from crude oil in the laboratory (R. 422-423, 424-425).

They differ *chemically* in that the hydrocarbons found in refinery gasoline are not all found in natural gasoline, and those that are found in natural gasoline are in proportions widely differing from those in refinery gasoline (Plaintiff's Exhibit 16, R. 720A; R. 172, 174-176, 483).

They differ in their *uses* in that natural gasoline is used principally as a blending material with refinery gasoline, as is benzol, a substance made from coal (R. 123-125, 178-179).

They are *priced* differently, prices of natural gasoline and refinery gasoline bearing no relation to each other (Plaintiff's Exhibit 8 [2a]; R. 129-131).

Butane is likewise a product very different from refinery gasoline. It, like natural gasoline, is manufactured from natural gas. *Finding* 16 (R. 29). It is normally a gas, being a liquid at atmospheric pressure only at 30° Fahrenheit or less. *Idem.* It is not used as a motor fuel, except in specially designed engines. Its principal use is as a blending material with refinery gasoline. It also has other uses.

The natural gas, from which both the natural gasoline and the butane here involved were manufactured, was all produced in the Panhandle Field of Texas.[3] Most of such gas came from straight gas wells. In addition, a substantial amount was "gas cap" natural gas and "solution" natural gas.[4]

The petitioner's position in the Court below, and here, is this: natural gas is not crude petroleum or a product thereof; both natural gasoline and butane are manufactured

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[2a] This Exhibit has not been printed for the purpose of this Petition. See stipulation at R. 868.

[3] About 95% of this field is produtive of gas only, although both gas and oil are produced along the northern edge (R. 57-58; see also Plaintiff's Exhibit 1, R. 629).

[4] A straight gas well produces natural gas only. "Gas cap gas" comes from a well producing gas and oil separately. "Solution gas" comes from the well mingled with oil and is separated thereafter. *Findings* 9 and 10 (R. 27-28).

from natural gas; therefore natural gasoline and butane are not crude petroleum or liquid products thereof. The Bureau of Internal Revenue has never regarded natural gas as crude petroleum or a product thereof, and has never taxed its transportation by pipe line under the statute here involved; this is admitted by the respondent (R. 616-617).

However, in the Court of Claims the respondent urged, alternatively, two hypotheses:

> 1. Contrary to the Bureau's position heretofore, natural gas is "crude petroleum"; or
>
> 2. Natural gasoline was at one time—albeit millions of years ago—crude petroleum, and was picked up by the natural gas and held in suspension.

On either hypothesis, respondent argued, natural gasoline is a liquid product of crude petroleum.

The findings of the Court of Claims did not adopt the latter of the respondent's hypotheses. Indeed, as the testimony of the respondent's own witnesses showed, that hypothesis is sheer speculation.

The Court of Claims did, however, adopt the former hypothesis. Despite the fact that it found that, as used in the trade generally, in the standard industry lexicon, in statutes, and in government publications, the term "crude petroleum" is synonymous with crude oil (*Findings* 18 and 19, R. 29, 30), it found that *as used by scientists* the term includes both crude oil and natural gas. *Finding* 22 (R. 32). Based on this alleged scientific definition of the term, the Court found that natural gas is a part of crude petroleum (*Finding* 22, R. 32), and that consequently natural gasoline is a liquid product of crude petroleum. In the Court's opinion there is also reference to legislative history of the Act in question. The Court apparently felt that this history disclosed an intention to tax the transportation of "gasoline", and concluded that "gasoline" must include natural gasoline.

The Court advances no theory as to how any of this line of reasoning could apply to butane. Indeed, the Court ignores butane in its opinion, virtually overlooks butane in its primary findings, and makes no ultimate findings whatsoever with respect to butane.

The evidence was very complete. It consisted of testimony from witnesses representing nearly every aspect of the industry and of a wide variety of exhibits. It showed, among other things, the usage of the term "crude petroleum" in the trade and in trade journals, scientific works, government reports, administrative regulations, statutes, and dictionaries. This mass of evidence points without question to an understanding of the term "crude petroleum", both popular and scientific, which excludes from its scope natural gas and its products, natural gasoline and butane.

The only evidence to the contrary, if any at all, consisted of testimony by three "experts" called by respondent. What they did was to construct an academic definition of "crude petroleum" in the following manner. They took the word "petroleum" and pointed to some technical usage thereof which, *depending on the context in which the term was used*, included both oil and gas. (See, *e. g.*, R. 440-442.) Then they argued that the term "crude petroleum" should be as broad as such usage of the term "petroleum".

Questions Presented.

Petitioner is aware that questions presented in a petition for writ of certiorari should be set forth briefly. However, the 1939 amendments to section 3 (b) of the Act of February 13, 1925, may mean that, where findings of fact of the Court of Claims are in question, a degree of particularity somewhat akin to that of a technical assignment of errors is requisite. Consequently, with some diffidence, petitioner sets forth the questions presented in rather more detail than would otherwise appear appropriate.

(A) Did the Court of Claims err in adopting as controlling an academic and allegedly scientific definition of the terms "crude petroleum" and "liquid products thereof", contrary to the general understanding of the terms both within and without the industry affected by the tax?

(B) Did the Court of Claims err in resorting to legislative history when the terms of the statute are clear on their face, and in interpreting that history to disclose an intention to tax pipe line transportation of natural gasoline?

(C) Did the Court of Claims err (1) in failing to make findings sufficient to support its judgment and order with respect to butane, and (2) in entering such judgment and order contrary to the findings, notably *Findings* 5 and 16 (R. 26, 29), and contrary to the evidence?

(D) Did the Court of Claims err:

1. In failing to render judgment for the plaintiff on the facts found.

2. In finding that natural gasoline is a liquid product of crude petroleum. See *Finding* 26 (R. 33).

a. Such finding is not supported by, and is in conflict with, the primary findings, notably *Findings* 5, 6, 13, 14, 15, 18 and 19 (R. 26, 28, 29, 30).

b. Such finding is contrary to the evidence.

3. In finding that scientists, chemists, laboratory technicians, and research engineers define the term "crude petroleum" as consisting of a combination of various hydrocarbons in the gaseous, liquid, and solid phase, and in finding that they consider "crude petroleum" as the total hydrocarbon substance in the reservoir. See *Findings* 21 and 22 (R. 31, 32).

4. In finding that "crude petroleum" is a broader term than "crude oil" and embraces the total hydrocarbon substance in the reservoir, including natural gas. See *Findings* 21, 22 and 24 (R. 31-33).

a. Such finding is not supported by and is contrary to the primary findings, notably *Findings* 18 and 19 (R. 29, 30).

b. Such finding is contrary to the evidence.

5. In finding that natural gasoline may be extracted from crude oil. See *Finding* 15 (R. 29).

6. In finding that natural gasoline is obtained "through a simple mechanical process". See *Finding* 25 (R. 33).

a. Such finding is contrary to *Finding* 14 (R. 28-29).

b. Such finding is contrary to the evidence.

7. In finding that natural gasoline is defined as a series of hydrocarbons which are the lighter fractions of crude oil. See *Finding* 25 (R. 33).

8. In finding that natural gasoline is "extracted" or "separated", rather than manufactured, from natural gas. See *Findings* 13, 15 and 25 (R. 28, 29, 33).

9. In failing to find that the term "crude petroleum", as universally used and understood, is synonymous with "crude oil" and denotes the hydrocarbon liquid product of an oil well, and excludes natural gas; and that the term is most generally used to designate merchantable or pipe line oil.

10. In failing to find that the natural gas, from which the natural gasoline and butane here involved were manufactured, was produced in the Panhandle Field of Texas (*cf. Finding* 5, R. 26) largely from dry

gas wells (*cf. Finding* 9 (1), R. 27), and none from stock or storage tank vapors.

11. In failing to find the amount or percentage of natural gasoline and butane here involved which were manufactured from gas well gas and gas cap gas, and in failing to find that at least such gas, and the natural gasoline and butane manufactured therefrom, were not crude petroleum or liquid products thereof.

Reasons for Granting the Petition.

1. The decision of the Court of Claims is based on the premise that the term "crude petroleum" includes natural gas. This means that pipe line transportation of natural gas, as well as its liquid products, falls within the scope of sec. 731 (a) of the Revenue Act of 1932, despite the fact that, admittedly, the Act has never before been so applied. Such judicial lawmaking, whether right or wrong, should not be allowed to stand without careful appellate review. For with the tremendous amount of pipe line transportation of natural gas and its liquid products the Court's interpretation of the Act will drastically affect millions of dollars' worth of investment and of consumers' goods and services.

2. While one other pending case (*Standard Oil Company of California* v. *United States*[5]) raises the ultimate question here involved as to natural gasoline, the present is the more appropriate test case. Indeed, in the *Standard Oil* case the court relied heavily on the Commissioner's Report herein. Moreover, the present case involves butane, not involved in the *Standard Oil* case. Furthermore, this petitioner and its parent are the world's largest pipe line

[5] 39 F. Supp. 180 (N. D. Calif., 1941). This case is now on appeal to the Circuit Court of Appeals for the Ninth Circuit.

shipper and manufacturer of natural gasoline (R. 85). Were this petition denied, and were the question involved later to be decided otherwise, the petitioner might find itself estopped by the judgment herein as to all taxes from 1936 on. *Tait* v. *Western Md. Ry. Co.*, 289 U. S. 620 (1933).

3. Quite aside from the economic importance of this case, it should be reviewed because of the principles of statutory interpretation followed by the Court of Claims. Basically, the Court has asserted that terms in a tax statute shall be given a meaning which is contrary to ordinary usage and which is to be found, if at all, only in occasional and abstruse scientific usage. Such a doctrine is contrary to the decisions of this Court[6] and, if pursued, both the Government and taxpayers would be faced with gravest uncertainty with respect to tax liability.

4. Finally, the decision below falls into such error, in that it is so directly contrary to the evidence, in that it fails to make findings of fact with respect to butane necessary to support its judgment, and in that it misapplies legislative history, that it should be reviewed in the interest of the orderly administration of justice. The Court of Claims is of exceeding importance to the Government and to its citizens and is growing more so. Only through review by this Court can it be held to the standards of care and deliberation, and to the proper legal principles, which should characterize its decisions perhaps above all other courts of first resort.

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[6] *De Ganay* v. *Lederer*, 250 U. S. 376, 381 (1919); *Old Colony R. Co.* v. *Commissioner*, 284 U. S. 552, 560 (1932); *Hale* v. *State Board of Assessment and Review*, 302 U. S. 95, 101 (1937); *Deputy* v. *du Pont*, 308 U. S. 488, 498 (1940); *cf. Burke* v. *Southern Pacific R. Co.*, 234 U. S. 669, 678-679 (1914).

WHEREFORE it is respectfully submitted that this petition should be granted.

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BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

Summary of Argument.

A. The decision of the lower Court was necessarily based on the finding that natural gas is a part of "crude petroleum." Since the transportation of "crude petroleum" is taxable under the provision of the Act of 1932 here involved, the effect of the decision is that the transportation tax applies *to the whole natural gas industry.* This is in the face of a denial on the floor of Congress that any such thing was intended and is contrary to the stand of the Bureau of Internal Revenue ever since the statute was adopted. A decision with such far-reaching economic consequences should be reviewed.

B. The lower Court has embarked upon a process of statutory interpretation which mocks the principle that words mean what they are ordinarily understood to mean.

C. Errors of the lower Court in misapplying and misinterpreting legislative history, in making findings contrary to the evidence, and in failing to make essential findings are such that review is called for.

II.

The Evidence.

Without regard to the question whether the lower Court's findings are supported by the evidence, the decision below was in error, as indicated in the Petition, in that it is not supported by the findings made. For the Court's findings concerning the ordinary understanding of the terms used in the statute are inconsistent with its ultimate finding that

natural gasoline is a product of crude petroleum. *Findings* 18 and 19 (R. 29, 30).

Therefore the Petition should be granted on the ground that the decision is inconsistent with the findings.[7]

The gravity of the error committed is made even clearer by an examination of the evidence. For that evidence utterly contradicts the finding with respect to a "scientific" understanding of the terms used in the statute, and the Court's conclusion with respect to the meaning of those terms.

Consequently, the Petition also seeks review of the sufficiency of the evidence to support the findings.

The record is bulky. However, most of it is directed to substantially the same point and a review of the evidence is much simpler than might at first appear.[8] This will be demonstrated by briefly supplementing the statement of facts in the Petition.

The lower Court found that the term "crude petroleum" includes all gaseous, liquid, and solid hydrocarbons, including *natural gas. Finding* 22 (R. 32). While respondent's three witnesses, whose testimony will be referred to in a moment, argued that the term *should* be used to signify natural gas, the record otherwise discloses *not a single instance* where the term has been used in that sense.

On the contrary, the record is literally burdened with evidence that the term "crude petroleum" is a term in frequent use and that it is everywhere used and understood, scientifically and popularly, to mean crude oil, and not to include natural gas. This evidence includes the testi-

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[7] See also Part V C of this brief, *infra*, p. 25.

[8] The record is bulky largely because of the practice contemplated by the applicable statute and rules of the Court of Claims. Were the record in narrative form it would be a fraction of its present size. Furthermore, many of the exhibits are doubtless properly subject to judicial notice, but were introduced in evidence for convenience.

mony of many witnesses thoroughly experienced in the oil and gas industry,[9] dealers, operators, technicians, scientists, state officials administering oil and gas conservation and tax laws, editors of trade journals and oil editors of leading newspapers. Included also in this evidence is the definition of "crude petroleum" by the American Society for Testing Materials, the "standard accepted authority of the industry";[10] the usage of commercial operators and dealers;[11] use in publications of the Bureau of Mines,[12] Oil Conservation Board, Trade Commission, Geological Survey, and other government agencies;[13] trade publications;[14] the Petroleum Code under the N. I. R. A.;[15] the laws and regulations of oil and gas producing states;[16] and Acts of Congress as far back as 1897.[17]

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[9] There were twenty-eight of these witnesses from Arkansas, California, Kansas, Louisiana, New Mexico, Oklahoma, Texas, including the Governor of Oklahoma and an ex-Governor of Texas.

[10] Referred to in *Finding* 19, second paragraph (R. 30). The definition appears in the Appendix hereto at page 30, *infra*. The American Society for Testing Materials was formed in 1902, following similar activities dating back to 1882. It is composed of representatives from many industries and, under its constitution, its several committees, which deal with the definition and specifications of specific materials, are composed equally of producers, consumers, and the public. Representatives of the United States Government usually represent the public. Bulletins issued by the Director of Procurement of the United States Government usually follow the testing methods developed by the Society (R. 168, 169, 170-171). As pointed out in *Finding* 19, the Society is recognized as the controlling authority in the oil and gas industry. The definition of crude petroleum referred to in *Finding* 19 is taken from the Society's Year Book for 1928, which of course was in wide circulation throughout the United States prior to the adoption of the Revenue Act of 1932. See also Funk and Wagnall's NEW STANDARD DICTIONARY, definition of "crude petroleum".

[11] *Finding* 18 (R. 29-30).

[12] *Finding* 19 (R. 30).

[13] Plaintiff's Exhibit 15, at R. 664-665, 670-674.

[14] Plaintiff's Exhibit 15, at R. 674-675.

[15] R. 294; Plaintiff's Exhibit 53, R. 727.

[16] *Finding* 19 (R. 30).

[17] *Finding* 19 (R. 30).

In fact, another section of the very Revenue Act here involved levies a tax on imports of "crude petroleum ½¢ per *gallon*",[18] thus showing that crude petroleum is the *liquid* oil.

Likewise the Revenue Act of 1934 taxes production and refining of "crude petroleum" in terms of *barrels*, again denoting the *liquid* oil;[19] and, making doubly clear that "crude petroleum" does not include gas or its product, natural gasoline, the same provision of the 1934 Act contains a separate provision for "gasoline produced from natural gas".[20] Furthermore, the regulations of the Bureau of Internal Revenue under these provisions of the 1934 Act deal with "crude petroleum" as meaning merchantable crude oil,[21] wholly inconsistent with the view that "crude petroleum" includes natural gas.

Finally, the Bureau construed the very section of the law, the very words, here involved as *not* including natural gas (R. 616-617).

Here is how the lower Court sought to escape all this evidence:

Respondent produced three witnesses, all from California, two consulting engineers and a professor. They said, in

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[18] Sec. 601 (c) (4); 47 Stat. 260.

[19] Sec. 604 (a) and 605 (a); 48 Stat. 766, 767. The former section also speaks of "crude petroleum produced from any well capable of producing more than five barrels per day"—obviously crude oil.

[20] Sec. 605 (a) of the 1934 Act reads:

> "There is hereby imposed (1) on *crude petroleum* refined or processed in the United States, a tax of one-tenth of one cent per *barrel* of forty-two gallons, * * * and (2) *on gasoline produced or recovered in the United States from natural gas* a tax of one-tenth of one cent per barrel of forty-two gallons, * * *."

[21] TREAS. REGS. 49 (1934). The whole regulation is worth reading, for it is replete with usage meaning merchantable crude oil. For example, it is provided in Article 12 that the tax falls on the "crude petroleum * * * after proper allowance has been made for deduction for basic sediment * * * In other words, the tax should be based on the quantity of crude petroleum which has reached the stage where it is gauged for royalty purposes or which is accepted for pipeline transportation."

substance, that the word "petroleum" includes the solid, liquid and gas hydrocarbons, and that the word "crude" simply denotes any form or the unrefined form (R. 398-399, 480-481, 551). They then concluded that "crude petroleum" includes not only crude oil but also natural gas and hydrocarbon solids. For this they could cite no authority or examples where the term "crude petroleum" was so used (R. 413-414, 470-472).

The principal one of these witnesses (Oliver) said that he had not seen or heard the term "crude petroleum" used very much and that he was simply giving "a personal opinion" (R. 408, 430; see also R. 413-414). His testimony was in terms of what the phrase means "to me" (R. 398-399, 413-414, 431). He admitted that as ordinarily used crude petroleum means *crude oil* (R. 431-432); he said that the nomenclature he was using was a scientific nomenclature occurring in books of chemistry (R. 512-513).

The second witness (Cannon) said he had never heard the term "crude petroleum" used in the industry, or if so only rarely (R. 480-481). He, also, testified in terms of its meaning "to me" (R. 453).

The third witness (Professor Carlson) also said that he had not heard the term "crude petroleum" used to any great extent (R. 555), and then said that the word "petroleum" is generally used to mean "crude oil" but that he doesn't regard that usage as "exact" (R. 560; see also R. 567, 568).[22]

Thus the respondent's evidence that the term "crude petroleum" includes natural gas consists of an academic definition personal to these three witnesses.

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[22] However, Professor Carlson's own classroom notes— the authenticity of which he was not frank enough to admit (R. 583), but which were fully identified otherwise (R. 617, *et seq.*)—disclose *consistent and repeated use of the terms "petroleum" and "crude petroleum" as synonymous with "oil" or "crude oil"*, and not as including gas. The term "crude petroleum" is used in no other sense in his notes (R. 619-621).

It is true that, although the term "crude petroleum" is always used to denote the hydrocarbon liquid (oil), there are some cases where the single word "petroleum" is used in a broader sense to include oil and gas. But such usage depends on the context—for ordinarily the term "petroleum" is used to mean only the liquid (oil).[23] As a matter of fact, the respondent's own evidence is that the term "petroleum" is used in both the two senses, depending on the context (R. 614-615). Illustrative is Professor Uren's book from which a definition of "petroleum," not "crude petroleum," is quoted by the lower Court in support of its main finding (*Finding* 22, R. 32); yet the same book uses both the term "petroleum" and the term "crude petroleum" in *other* passages as synonymous with *crude oil* (R. 574-578). Indeed, that book never uses the term "crude petroleum" in any other sense. And a definition of "petroleum" heavily relied upon by respondent in its brief in the lower Court is that in Porter's PETROLEUM DICTIONARY (1st ed., 1930), at p. 168 which says:

> "In its *widest sense* the term 'petroleum' embraces the whole of the hydrocarbons—gaseous, liquid and solid, occurring in nature. *The word 'petroleum' in general use signifies an oil, inflammable, liquid* mixture of numerous hydrocarbons * * * Also known as Rock Oil, Mineral Oil, Natural Oil, Coal Oil, Earth Oil, Seneca Oil." (Italics ours.)

From an occasional abstract usage of the word "petroleum" to include gas, on the basis of which respondent's witnesses argued that an "exact" usage of "crude

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[23] As this Court said in *Burke* v. *Southern Pacific R. Co.*, 234 U. S. 669, 676 (1914), "Petroleum has long been popularly regarded as a mineral oil. As its derivation indicates, the word means 'rock oil', an oily substance so named because found naturally oozing from crevices in rocks." See also Webster's NEW INTERNATIONAL DICTIONARY (2d ed., unabridged), definition of "petroleum"; Funk and Wagnall's NEW STANDARD DICTIONARY, definition of "petroleum".

petroleum" should, in their personal opinion, include gas, the lower Court found that *scientists* use the term to embrace hydrocarbon solids, liquids and gas and that natural gas is therefore a part of "crude petroleum" (*Finding* 22, R. 32). This is in the face of the mass of evidence referred to above at pages 13-15, and in the face of its own finding that "crude petroleum" as used by the operators and dealers in the industry (*Finding* 18, R. 29), and as used in the standard industry authority, in statutes and in government publications (*Finding* 19, R. 30), is synonymous with crude oil.

III.

The Economic Consequences of the Decision Below Call for Review.

Natural gasoline is generally regarded as a product of natural gas.[24] And so it is in fact. *Finding* 14 (R. 28-29). Consequently, it is essential to a decision holding the pipe line transportation of natural gasoline to be taxable that the term "crude petroleum" as used in the statute be defined to include natural gas. This would mean that the pipe line transportation of natural gas is also taxable. For the statute taxes "crude petroleum"—it does not say "liquid crude petroleum". That his definition of crude petroleum would mean that natural gas is also taxable was admitted by respondent's principal witness (R. 416).

Although the provision of the statute here in question is now nearly ten years old, no one has ever before contended that it applies to natural gas. The legislative history of the section involved is squarely contrary to such an interpretation.[25] *And the Bureau of Internal Revenue has never so applied it* (R. 616-617). Thus the decision below upsets a settled construction of the tax law and will have serious economic consequences.

[24] *Finding* 18, second paragraph (R. 30). See also R. 114, 238, 291, 296, 302-303, 306, 546-547, 594-595, 602.

[25] *Infra*, pp. 21-24.

The natural gas industry has grown to giant size. In 1939 nearly two and a half trillion cubic feet of natural gas were consumed in this country. The total value of this gas at points of consumption was $533,721,000 for the year, and the domestic users alone numbered nearly nine million for the year. Its commercial and industrial uses are manifold and have spread throughout the country.[26]

Virtually all transportation of natural gas is by pipe line. It could not be transported any other way.

An excise tax of the sort here dealt with is quite like a sales tax. Its effects fall not on the transporter alone, but also on the consumer—consequences which lead statesmen to view such a form of taxation with antagonism and caution.[27]

Thus, with respect to a form of taxation particularly acute in its economic consequences, the decision below leads to the imposition of a tax upon an exceedingly important industry. The Bureau's stand for ten years has been otherwise, and the Court's decision should not now prevail without appellate review.

IV.

The Decision Below Violates an Indispensable Principle of Statutory Interpretation.

The lower Court in its process of statutory interpretation has radically departed from the decisions of this Court.

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[26] Lott and Hopkins, *Natural Gas* (Govt. Printing Office, 1941) pp. 1029-1031 (taken from Bureau of Mines MINERAL YEAR BOOK REVIEW OF 1940). So important has the industry become that Congress in 1938 adopted "A Natural Gas Act" (52 Stat. 821; 15 U. S. C. § 717), declaring that the business of transporting and selling natural gas is affected with a public interest, and imposing extensive regulation under the jurisdiction of the Federal Power Commission.

[27] See HEARINGS BEFORE HOUSE COMMITTEE ON WAYS AND MEANS ON REVENUE REVISION 1938, 75TH CONG. 3D SESS., pp. 70, 108. It is of interest to observe that during the debate in the House on the section of the law here involved the point was strongly made that the pipe line company would shift the burden of the tax to the consumer and producer. 75 CONG. REC. 7228.

Not only in the light of the evidence, but in the light of its own findings, it has taken an alleged academic, scientific definition of the statute's words and adopted it in the face of the admitted general understanding of the terms in the industry to the contrary. It would be difficult, indeed, to find a clearer violation of the test set forth by Mr. Justice Cardozo in *Hale* v. *State Board of Assessment and Review*, 302 U. S. 95 (1937), at p. 101:

> "Our search is for something more than the meaning of a property tax or an excise in the thought of skilled economists or masters of finance. It is for the meaning that at a particular time and place and in the setting of a particular statute might reasonably have acceptance by men of common understanding."

Unless judicial interpretation is to be in accordance with common understanding among those affected, tax liability will become hopelessly confused. Increasingly our Revenue Acts must speak in the language of the market place. Unfortunately, however, such language may be susceptible to adroit manipulation by the expert witness according to alleged scientific and technological theories which neither the courts nor the run of men affected understand. Therefore it is of particular importance that such language be given the commonly understood meaning. For once the courts cast loose from the objective test set forth in the *Hale* case—and in so many others [28]—neither the tax officials nor the taxpayers can know where they stand. That the lower Court has laid aside the accepted standard for determining a statute's meaning is apparent from its findings.[29] And when one goes behind those findings to the

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[28] *De Ganay* v. *Lederer*, 250 U. S. 376, 381 (1919); *Old Colony R. Co.* v. *Commissioner*, 284 U. S. 552, 560 (1932); *Deputy* v. *du Pont*, 308 U. S. 488, 498 (1940); *Robertson* v. *Salomon*, 130 U. S. 412, 414-415 (1889); *Two Hundred Chests of Tea*, 22 U. S. 428, 437 (1824); *cf. Burke* v. *Southern Pacific R. Co.*, 234 U. S. 669, 678-679 (1914).

[29] *Supra*, pp. 5, 18.

evidence, one discovers the aptest illustration of the evil such a decision breeds. For the decision below places a premium on efforts to explain away and contradict commonly accepted meanings by a clever exercise in constructing "scientific" glossaries.

V.

Further Errors in the Lower Court's Decision Call for Correction.

The importance of the Court of Claims is manifest. Especially with respect to tax law, its decisions are becoming of controlling importance to the Government and to the taxpayers. Since its work is subject to the healthy check of appellate scrutiny only in this Court, it should be reviewed when it errs as gravely as it has in the following respects:

A. *The Lower Court Misapplied and Misinterpreted Legislative History.*

Not in its findings, but in its opinion, the lower Court invokes legislative history. It errs in doing so, for the language of the statute is not ambiguous.[30] "Crude petroleum" is not and never was ambiguous to anyone in the industry.

The Court concludes from the legislative history that Congress intended "to tax pipe line transportation" (R. 38). This sweeping conclusion gleans far more than that history discloses. In fact, the history contradicts the Court. Here it is:[31]

The Revenue Act of 1918, in section 500 (e) (40 Stat. 1057, 1102), taxed the transportation of "oil" by pipe line.

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[30] *United States* v. *Shreveport Grain & Elevator Co.*, 287 U. S. 77 (1932); *Van Camp & Son* v. *American Can Co.*, 278 U. S. 245 (1929).

[31] The relevant portions are set forth verbatim in the Appendix hereto.

"Oil" was defined in a Regulation to mean "crude petroleum and such of its products as may be transported by pipe line".[32]

The Revenue Act of 1932, as introduced and as reported by the House Committee, did not contain the section here involved. The section first appeared as a committee amendment proposed by Congressman Crisp, then acting Chairman of the Ways and Means Committee, who was in charge of committee amendments. As thus proposed, and as adopted by the House, the section was virtually identical with section 500 (e) of the 1918 Act. Indeed, it was described as "taken from the Act of 1918".[33] In the House debates there occurred the following colloquy with Congressman Crisp:

> "*Mr. Glover. Does this amendment affect the carrying of natural gas through pipe lines?*
>
> "*Mr. Crisp. No; it does not.*
>
> "*Mr. Glover.* Does the gentleman intend to offer any amendment to that effect?
>
> "*Mr. Crisp.* The gentleman's colleague is the chairman of this subcommittee and his colleague, the chairman of the subcommittee, together with his associates, recommended this amendment to the full committee, and the full committee approved it. That subcommittee is still in existence and may make other recommendations. However, I cannot be sure what they are going to do."[34]

Neither Congressman Crisp nor others made further recommendations on the subject.

Consequently, it was abundantly clear that natural gas was not to be taxed. It was intended simply to revive the 1918 Act.

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[32] Art. 91, TREAS. REGS. 49 (Revised 1921), as promulgated under Revenue Act of 1918.

[33] 75 CONG. REC. 7228.

[34] 75 CONG. REC. 7226.

However, the 1918 Act mentioned only "oil". It did not mention "products". As already noted, it was in the Regulation that "oil" was defined to mean "crude petroleum and such of its products as may be transported by pipe line". *Thus "oil" and "crude petroleum" were treated as synonymous.* But, naturally, there would have been some question whether the Regulation was right in holding that "oil" or "crude petroleum" included the products thereof, such as gasoline, and the same question would, of course, have arisen under the House version of the 1932 Act.[35]

Hence when the 1932 Act reached the Senate Committee, section 731 (a) was amended to its present form by paraphrasing the Regulation under the 1918 Act, with the explanation that:

> "• • • this will make transportation of gasoline *as well as crude oil* taxable." (Italics ours.)[36]

Certainly this shows clearly enough that crude petroleum and crude oil are synonymous.

In conference the House accepted the Senate amendment.[37]

Thus, throughout, Congress was dealing with crude oil, not natural gas. Starting with the wording of the 1918 Act in an amendment prepared after the bill was first reported, the Senate Committee simply effected the intention expressed in the House to revive the 1918 Act by more carefully adapting the legislation to the language of the 1918 Regulation, treated "crude petroleum" as synonymous with "crude oil", as had the 1918 Regulation, and made clear that liquid products thereof—specifically nam-

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[35] *Cf. Miller* v. *Standard Nut Margarine Co.*, 284 U. S. 498, 508 (1932).

[36] SEN. REP. No. 665, 72ND CONG., 1ST SESS., p. 47.

[37] H. REP. No. 1492, 72ND CONG., 1ST SESS., p. 26.

ing gasoline—would be included, as provided in the 1918 Regulation.

This history completely negates the lower Court's finding that natural *gas* or *its* products come within the statute.

Perhaps the lower Court was impressed with the Senate Committee's statement that "gasoline" was to be included in the tax. Another court, in a recent case similar to the present, emphasized that the Senate Committee's statement referred to gasoline and then said that casinghead gasoline (a form of natural gasoline) is gasoline.[38] But natural gasoline is not gasoline. It is a very different substance. (See *supra*, pp. 3-4.) *This same Court of Claims in March of last year held most emphatically that the word "gasoline" in sec. 617 of the same Revenue Act of 1932 means gasoline and does not include natural gasoline, and that no one would so regard it.*[39] Congress didn't think it was taxing natural gasoline.[40] What it thought and said was simply that it was taxing crude oil and its liquid products, such as gasoline.

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[38] *General Petroleum Corp.* v. *United States*, 24 F. Supp. 285, 288 (S. D., Calif., 1938).

[39] *Coleman* v. *United States*, 37 F. Supp. 273 (1941). The court said at p. 276: "We do not think any court would hold that if a purchaser ordered a quantity of gasoline the seller could fill that order by supplying casinghead or natural gasoline, which could not be used for the same purpose as gasoline. In fact, we think the meaning of the order would be so plain that no seller would attempt to do anything of that kind • • • The term 'gasoline' as ordinarily understood would not include casinghead or natural gasoline, which in its usual sense would have a quite different meaning."

[40] When Congress has meant to tax natural gasoline it has said so in terms. Thus, sec. 617 of the Revenue Act of 1932, referred to above, was amended in the Revenue Act of 1934 so as to include, specifically, "casinghead and natural gasoline". This amendment, and its effect as an indication that when Congress refers only to "gasoline" it does not mean "natural gasoline", are discussed in the *Coleman* case, *supra* n. 39, 37 F. Supp. at p. 277. So in sec. 605 (a) of the Revenue Act of 1934, already discussed, *supra*, p. 15, n. 20, natural gasoline was specially provided for.

B. *The Lower Court's Findings Are Not Supported by the Evidence.*

After the decision of this Court in *United States* v. *Esnault-Pelterie*, 303 U. S. 26 (1938), when the United States found itself unable to have a review of the sufficiency of evidence to support the findings of the Court of Claims, the Attorney General requested both House and Senate to amend the Judiciary Act so that such a question could be reviewed.[41] Congress complied.

While the decision below is inconsistent with its own findings, the lower Court commits equally great error in adopting a definition of "crude petroleum" on the basis of speculative and unsupported assertions by respondent's witnesses in the face of overwhelming evidence that both popularly and scientifically "crude petroleum" is never used to include natural gas. The gravity of this error is magnified by the bald admission by each of respondent's witnesses that he rarely, if ever, heard or saw the term used. Such is exactly the kind of error for which, at the request of the Attorney General, Congress provided review by this Court.

C. *The Lower Court Ignored an Essential Issue.*

The lower Court made *no ultimate findings* regarding butane. Butane is scarcely mentioned even in its primary findings. See *Finding* 16 (R. 29). And in its opinion it actually says that natural gasoline presents the sole issue in the case. Plainly it has erred by failing to make necessary findings and by entering judgment unsupported by findings. *Universal Battery Co.* v. *United States*, 281 U. S. 580, 584 (1930).

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[41] HOUSE REP. No. 495, 76TH CONG., 1ST SESS., p. 2.

VI.

Conclusion.

The question involved is of real economic importance. Moreover, the nature of the errors committed, involving sharp departures from settled principles, call for review in the interest of orderly and just administration of the revenue laws. Despite the absence of a conflict of decisions upon the precise issue, the Petition should be granted, as petitions were under similar circumstances in *United States* v. *Cowden Manufacturing Co.*, 312 U. S. 34 (1941); *Helvering* v. *Kehoe*, 309 U. S. 277 (1940); *Morgan* v. *Commissioner*, 309 U. S. 78 (1940); and *Paramount Publix Corp.* v. *American Tri-Ergon Corp.*, 294 U. S. 464 (1935).

Respectfully submitted,

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APPENDIX.

Pertinent Provisions of Statutes, Legislative History of Section 731, Revenue Act of 1932, and Departmental Regulations.

Revenue Act of 1918, c. 18, 40 Stat. 1057, 1102:

Sec. 500. That from and after April 1, 1919, there shall be levied, assessed, collected, and paid, in lieu of the taxes imposed by section 500 of the Revenue Act of 1917—

(e) A tax equivalent to 8 per centum of the amount paid for the transportation on or after such date of oil by pipe line.

Treasury Regulations 49 (revised), promulgated under the Revenue Act of 1918:

Part V.—Transportation of Oil by Pipe Line.

Art. 91. Definition of Oil.—The word "oil," as used in the foregoing subdivision, is held to mean crude petroleum and such of its products as may be transported by pipe line.

Sec. 731, H. R. 10236, 72nd Cong., 1st Sess., as introduced in the House as a committee amendment and as it passed the House of Representatives:

Sec. 731.—Tax on Transportation of Oil by Pipe Line.

(a) There is hereby imposed upon all transportation of oil by pipe line originating on or after the fifteenth day after the date of the enactment of this Act and before July 1, 1934—

(1) A tax equivalent to 8 per centum of the amount paid on or after the fifteenth day after the date of the enactment of this Act for such transportation, to be paid by the person paying for such transportation and to be collected by the person furnishing such transportation.

Statement made by Mr. Crisp, acting chairman of House Committee on Ways and Means, who proposed this committee amendment, 75 CONG. REC., page 7226:

Mr. Crisp: Mr. Chairman, this amendment levies a tax upon the transportation of oil through pipe lines, the tax being 8 per cent of the charge for the service of transporting the oil, those receiving the service to pay the tax.

• • • • • • •

Mr. Glover: Does this amendment affect the carrying of natural gas through pipe lines?

Mr. Crisp: No; it does not.

Mr. Glover: Does the gentleman intend to offer any amendment to that effect?

Mr. Crisp: The gentleman's colleague is the chairman of this subcommittee and his colleague, the chairman of the subcommittee, together with his associates, recommended this amendment to the full committee, and the full committee approved it. That subcommittee is still in existence and may make other recommendations. However, I can not be sure what they are going to do.

• • • • • • •

Sec. 731, H. R. 10236, 72nd Cong., 1st Sess., as reported by Senate Committee on Finance, passed by the Senate and agreed to in Conference:

SEC. 731. TAX ON TRANSPORTATION OF OIL BY PIPE LINE.

(a) There is hereby imposed upon all transportation of crude petroleum and liquid products thereof by pipe line originating on or after the fifteenth day after the date of the enactment of this Act and before July 1, 1934—

(1) A tax equivalent to 4 per centum [42] of the amount paid on or after the fifteenth day after the date of the enactment of this Act for such transportation, to be paid by the person furnishing such transportation.

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[42] The Senate reduced the tax from 8 per cent to 3 per cent. In conference the tax was finally fixed at 4 per cent.

Report of Senate Committee on Finance, Senate Report No. 665, 72nd Cong., 1st Sess., page 47:

Part IV. Tax on Transportation of Oil by Pipe Line.

The rate under Section 731 on transportation of oil by pipe line has been reduced from 8 to 3 per cent. The word "oil" has been changed to "crude petroleum and liquid products thereof." This will make transportation of gasoline as well as crude oil taxable.

Amendments have been made to impose the tax on the pipe line rather than the person paying for the transportation. The provisions covered by the new Part VII have been stricken out.

Statement of the Managers on the part of the House, Revenue Bill of 1932, House Report No. 1492, 72nd Cong., 1st Sess., page 26:

Amendment No. 232: This amendment makes the tax under the House Bill on transportation by pipe line applicable to crude petroleum and its liquid products, instead of to oil only. The House recedes.

Revenue Act of 1932,[43] *c. 209, 47 Stat. 169, 275:*

Part IV.—Tax on Transportation of Oil by Pipe Line.

Sec. 731. *Tax on transportation of oil by pipe line.*

(a) There is hereby imposed upon all transportation of crude petroleum and liquid products thereof by pipe line originating on or after the fifteenth day after the date of the enactment of this Act and before July 1, 1934—

(1) A tax equivalent to 4 per centum of the amount paid on or after the fifteenth day after the date of the enactment of this Act for such transportation, to be paid by the person furnishing such transportation.

• • • • • • •

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[43] Now known as Section 3460, Internal Revenue Code.

American Society for Testing Materials—definition of "crude petroleum" contained in Society's Year Books beginning in 1928.

Crude Petroleum.—A naturally occurring mixture, consisting predominantly of hydrocarbons, and/or of sulfur, nitrogen and/or oxygen derivatives of hydrocarbons, which is removed from the earth in liquid state or is capable of being so removed.

Note.—Crude petroleum is commonly accompanied by varying quantities of extraneous substances such as water, inorganic matter and gas. The removal of such extraneous substances alone does not change the status of the mixture as crude petroleum. If such removal appreciably affects the composition of the oil mixture, then the resulting product is no longer crude petroleum.

(See R. 170; see also *Court of Claims Finding* 19, R. 30.)

INDEX

CITATIONS

456434—42

In the Supreme Court of the United States

OCTOBER TERM, 1941

No. 923

PHILLIPS PIPE LINE COMPANY, PETITIONER

v.

THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Claims (R. 33–38) is reported in 40 F. Supp. 981.

JURISDICTION

The judgment of the Court of Claims was entered October 6, 1941 (R. 38). The petition for a writ of certiorari was filed February 5, 1942, the time for filing having been extended by an order of this Court entered November 14, 1941 (R. 867). Jurisdiction of the Court is invoked under section

3 (b) of the Act of February 13, 1925, as amended by the Act of May 22, 1939.

QUESTION PRESENTED

Whether natural gasoline is crude petroleum or a liquid product thereof within the meaning of section 731 (a) of the Revenue Act of 1932.

STATUTE INVOLVED

Revenue Act of 1932, c. 209, 47 Stat. 169:

> SEC. 731. TAX ON TRANSPORTATION OF OIL BY PIPE LINE.
>
> (a) There is hereby imposed upon all transportation of crude petroleum and liquid products thereof by pipe line * * *.
>
> (1) A tax equivalent to 4 per centum of the amount paid on or after the fifteenth day after the date of the enactment of this Act for such transporation. * * *

STATEMENT

The special findings of fact made by the Court of Claims (R. 24–33) may be summarized as follows:

During the years 1932 through 1936 petitioner corporation was engaged in the business of transporting by pipe line refinery gasoline, natural gasoline, and butane (R. 24). The three products were transported by petitioner separately and were kept in separate tanks at petitioner's pipe-line terminals (R. 24–25). For the period June 20, 1932, to March 31, 1936, inclusive, petitioner paid $264,-

784.38 taxes in respect of its transportation of natural gasoline and butane (the amount paid in respect of butane being $29,407.21) (R. 25).

All of this natural gasoline and butane was produced in the Panhandle Field of Texas. The field's major importance is as a gas reserve, although many wells produce gas from an upper structure and oil and gas from a lower. All structures produce oil at sea level, and all appear to be intercommunicative. In the Panhandle area two types of wells are recognized: one that produces only gas, and the other which produces both gas and oil. (R. 26.)

There are three general types of natural gas: (1) gas well gas, coming from a straight gas well, (2) gas cap gas, coming from formations above oil strata, and (3) solution gas, which comes in solution with oil from a well (R. 27). The first two types are carried directly by a pipe line to a natural gasoline plant (R. 27). Solution gas is carried with its solvent oil from the well by pipe to a separator, where the gas rises and enters a gas pipe line to the natural gasoline plant (R. 28).

From the well or from the separator the oil is carried by pipe line to a stock tank, where it is allowed to stand for several days for settling out of basic sediment, water, and sand. The remaining liquid, known as "merchantable" or "pipe-line"

oil, is then piped to permanent storage tanks or into commerce. (R. 28.)[1]

At the natural gasoline plant natural gasoline is extracted from natural gas by means of charcoal absorption, compression, or oil absorption (R. 28–29). The natural gasoline is then transported by pipe line and marketed (R. 28). Natural gasoline is highly volatile (R. 29). From 1932 to 1936 it was not satisfactory for use alone as a motor fuel; it required stabilization and blending with refinery gasoline,[2] and the total American production of natural gasoline was almost entirely so used during the years in question (R. 29).

One of the hydrocarbon components of natural gas is butane. In the extraction of natural gasoline from natural gas, butane is segregated as a liquid and is thereafter stored, shipped, and sold as a liquid. Butane is a gas at temperatures above 30° F. unless kept under pressure. It is classified as a "liquefied petroleum gas". (R. 29.)

Commercial operators and dealers in oil and gas generally understand the terms "crude", "crude oil", "crude petroleum", and "crude petroleum oil" as designating "merchantable" or "pipe-line" oil. The terms "crude" and "crude oil" are the terms generally used in daily trade parlance, while

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[1] Natural gas is sometimes obtained from stock or storage tanks, where it may escape from the oil; from the tank it is piped to a natural gasoline plant (R. 27).

[2] These operations are performed at pipe-line terminals or at oil refineries (R. 28).

the terms "petroleum" and "crude petroleum" are used in technical writings. Operators and dealers regard natural gasoline as a product of natural gas and not as a product of crude petroleum. Those engaged in the oil and gas industry or industries treat oil and gas as separate and distinct commodities, with different pricing and handling. Leases and contracts for the production of and payment of royalties on oil and gas provide separately for the two commodities. (R. 29–30.)

Scientists and engineers, however, employ "crude petroleum" as a broader definition, denoting the entire hydrocarbon content of a reservoir,[3] natural gas included; estimates of oil and gas in place are reported as "petroleum reserves", and comprise all forms that may be found, in gaseous, liquid, or solid state. This view is based on the scientific conception of natural gas, natural gasoline, refinery gasoline, kerosene, fuel and lubricating oils, paraffin wax, etc. as groupings of certain related compounds (of carbon and hydrogen), with each grouping containing the same compounds as the other groupings but in varying proportions. The most important of these compounds (in the paraffin series of hydrocarbons) are methane, ethane, propane, butane, pentane, hexane, heptane,

[3] The total content of the reservoir is termed "reservoir fluid" (R. 31).

octane, nonane, and decane.[4] Natural gasoline, while resembling refinery gasoline, contains a larger percentage of the lighter hydrocarbons, butane, pentane, and hexane, than refinery gasoline.[5] There is no definite chemical dividing line between natural gas, natural gasoline, refinery gasoline,[6] and crude oil. (R. 31.)

The physical state of the hydrocarbons and their recognized groupings may be changed readily by variations of temperature and pressure: hydrocarbon gases may be liquefied by cooling and compression, and liquids may be transformed into a gaseous state (R. 31–32). "Crude oil" is defined by scientists and engineers as the liquid portion of petroleum in unrefined form (R. 32). "Natural gas" is defined as the naturally occurring mixture of gaseous constituents of petroleum (R. 33). "Natural gasoline" is defined as a series of hydrocarbons which are the lighter fractions of crude oil;[7] it is a liquid at normal temperature and pres-

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[4] The groupings also contain traces of heavier hydrocarbons (R. 31). The basic formula for all of the compounds in this hydrocarbon series is C_nH_{2n+2}. See 5 Encyclopedia Britannica (14th ed.) 365–366.

[5] See Pet. Ex. 16, R. 720A.

[6] Refinery gasoline manufactured by "cracking" processes is an exception (R. 31).

[7] These same hydrocarbons exist as a vapor in natural gas, from which natural gasoline is extracted, conversely as the lightest hydrocarbons (methane, ethane—gases under normal conditions) exist to some extent dissolved in crude oil and in refinery gasoline (R. 28; 720A).

sure, and is stored and shipped in that state (R. 33).

In June 1936 petitioner filed a claim for refund of the taxes paid by it with respect to the transportation of natural gasoline and butane (R. 9–11, 26). In December 1936 the Commissioner of Internal Revenue rejected the claim (R. 23, 26). Petitioner on December 14, 1938, filed in the Court of Claims a petition for refund of taxes (R. 1–7). After hearing before a commissioner and argument (R. 24), the court at the conclusion of its special findings of fact (summarized pages 2–7, *supra*), found that natural gasoline is a liquid product of crude petroleum (R. 33). Accordingly, it concluded that petitioner's taxes had been rightly paid (R. 33), and gave judgment dismissing the petition on October 6, 1941 (R. 38).

ARGUMENT

Congress in section 731 (a) of the Revenue Act of 1932 specified for taxation the transportation by pipe line of "crude petroleum and liquid products thereof". Section 500 (d) and section 500 (e) of the Revenue Acts of 1917 and 1918, respectively, had laid a tax on the carriage of "oil by pipe line".[8] When the tax was sought to be revived in the Reve-

[8] C. 63, 40 Stat. 315; c. 18, 40 Stat. 1102. These tax provisions were subsequently repealed. Sec. 500 of the Revenue Act of 1918, c. 18, 40 Stat. 1101; sec. 1400 (a) of the Revenue Act of 1921, c. 136, 42 Stat. 320.

nue Bill of 1932, it first appeared as a committee amendment in the House of Representatives, and the words of designation, "oil by pipe line", were adopted without change. 75 Cong. Rec. 7225–7226, 7229. The Senate Committee on Finance changed "oil" to "crude petroleum and liquid products thereof", with the explanation that: "This will make transportation of gasoline as well as crude oil taxable." S. Rep. No. 665, 72d Cong., 1st sess., p. 47.[9] The intention of Congress regarding the scope of *gasoline* may well be inferred from the definition given in section 617 (c) of the Revenue Act of 1932 (manufacturers' excise provisions):

> (2) the term "gasoline" means gasoline, benzol, and any other liquid the chief use of which is as a fuel for the propulsion of motor vehicles, motor boats, or aeroplanes.

There is thus apparent a plain legislative purpose to cover by the pipe-line transportation tax liquids commonly sold and used as *gasoline*. The exemption of natural gasoline, chemically similar to refinery gasoline and used for the same purposes (being blended with refinery gasoline before marketing), ought not be implied in the absence of clear evidence that Congress intended to except it from the petroleum liquids designated in the tax statute.

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[9] The change was accepted in the conference report. H. Rep. No. 1492, 72d Cong., 1st sess., pp. 1, 26. The new language may have been unnecessary in view of Article 91 of Treasury Regulations 49 (1919) which defined "oil" under the earlier transportation tax provisions as "crude petroleum and such of its products as may be transported by pipe line."

Petitioner challenges the Court of Claims finding that natural gasoline is a liquid product of crude petroleum on the narrow ground that "crude petroleum" signifies only "merchantable" or "pipe-line" oil, which remains after the settling in stock tanks of an oil well's fluid output; petitioner then argues that since natural gasoline is produced from natural gas rather than from merchantable oil it is not covered by section 731 (a). This interpretation of "crude petroleum" is grounded ultimately on a specialized trade usage of the term (see Pet. 13–18), and in consequence should not govern in construing the tax statute. Cf. *McCaughn* v. *Hershey Chocolate Co.*, 283 U. S. 488, brief for respondents, pp. 9–10.

The interpretation which the Court of Claims accorded to "crude petroleum" is that held by scientists and engineers, being dictated by scientific considerations in the chemistry of petroleum. See Statement, *supra*, pp. 5–6. Since it is in harmony with the sense of the taxing statute, the decision of the court below preferring this interpretation to that contended for by petitioner is sound.

The Court of Claims construction in this case of section 731 (a) with respect to natural gasoline is that which has been employed consistently by the Treasury in administration of the tax. In S. T. 564, XI–2 Cum. Bull. 531 (1932), the Bureau of Internal Revenue ruled:

> "Natural or casinghead gasoline is a liquid product of crude petroleum, within the

> meaning of section 731 of the Revenue Act of 1932, and the transportation thereof by pipe line is subject to the tax imposed by that section of the law. * * *

Likewise the federal courts which have previously considered the problem of the present case have held the transportation of natural gasoline taxable under section 731. *Standard Oil Co. of Cal.* v. *United States,* 39 F. Supp. 180 (N. D. Cal.); *General Petroleum Corp.* v. *United States,* 24 F. Supp. 285 (S. D. Cal.).

Petitioner urges that the decision below is in effect a holding that the transportation of natural gas by pipe line is taxable under section 731 (a) of the Revenue Act of 1932, and that such an important consequence of the Court of Claims position calls for review by this Court (Pet. 18–19). But it is apparent that the decision of the court entails no such result. As petitioner states (Pet. 18; see R. 616), the Treasury has never sought to collect a tax under section 731 on the transportation of natural gas. It is apparent from the background, terms, and legislative history of the statute that the object of taxation is the transportation of petroleum liquids (see pages 7–8, *supra*); natural gas is excluded. Cf. 75 Cong. Rec. 7226.[10] Accordingly, the objection of petitioner is not well taken.

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[10] Representative Crisp, who introduced the Revenue Bill of 1932, there stated in answer to a question that the pipeline tax would not cover natural gas.

Butane, as the Court of Claims found (R. 29), is a constituent compound of natural gas; after segregation from natural gas it is stored, shipped, and sold as a liquid. Contrary to the contention of petitioner (Pet. 25), the decision below with respect to butane is supported by findings (R. 24, 25, 26, 29) in conjunction with the same reasoning which the court employed to hold taxable petitioner's transportation of natural gasoline; the absence of an ultimate finding, *in haec verba* that butane is a liquid product of crude petroleum, is immaterial.

CONCLUSION

The decision of the Court of Claims is sound, and no conflict of decisions is presented. It is therefore respectfully submitted that the petition should be denied.

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The Brief in Opposition states that the lower Court's definition of "crude petroleum" should be adopted. See *Brief in Opposition,* at p. 9. Then the Brief proceeds on the very next page to argue that natural gas is not "crude petroleum". See *Brief in Opposition,* at p. 10.

The lower Court's definition of "crude petroleum" appears in its *Finding* No. 22 (R. 32). It is:

> " 'Crude petroleum' is a broader term than 'crude oil' and includes the total hydrocarbon substances in the reservoir. *Natural gas, crude oil, asphalt, paraffin wax are all parts of crude petroleum.*"

Thus the lower Court's definition of "crude petroleum" includes "natural gas"—the Respondent's argument that natural gas is not crude petroleum is flatly inconsistent with the lower Court's definition which the Respondent is trying to defend. Indeed that argument is inconsistent as well with the contention of the Respondent's own witnesses. See *Petition*, at pp. 16, 18. This kind of an argument demonstrates the difficulties and dangers of departing from the usual meaning of language used in a statute; Congressmen are ordinary men and to attempt to impute to them an academic definition of words, such as Respondent's witnesses espoused as their personal "scientific" views, leads to utter confusion.

Confusion is confounded by the Respondent's extraordinary suggestion that the definition of "gasoline" in sec. 617 (c) of the Revenue Act of 1932 reflects the meaning of that term as used in the Senate Committee's comment on the section of the Act here involved, which in turn is attributed to Congress. See *Brief in Opposition*, at p. 8.

In the first place, the definition in sec. 617 (c) includes benzol, a product of coal, which certainly is not within the scope of the section of the Act here involved. In the second place, the definition in sec. 617 (c) has already been interpreted as *excluding* natural gasoline. *Coleman* v. *United States*, 37 F. Supp. 273 (Ct. Cls., 1941); see discussion in *Petition*, at p. 24. In the third place, Congress itself has decided that the definition in sec. 617 (c) of the 1932 Act excludes natural gasoline; for Congress amended that section in the 1934 Revenue Act so as specifically to include natural gasoline. See *Petition*, at p. 24, n. 40. Of this action of Congress the opinion in the *Coleman* case says:

> "The 1934 act and the reports of Congress on the Bill showed plainly that Congress did not think that when the words of the 1932 Act were considered in their ordinary and usual sense, casing-head or natural gasoline was taxable. We think this action of Congress tends to show not only how Congress understood the 1932 act but how it would be understood by the public

generally, and in this way aids in determining the true meaning of its language." 37 F. Supp. at p. 277.

The Respondent also suggests that the words crude petroleum and its liquid products mean the same thing as "oil". See *Brief in Opposition*, at p. 8, n. 9. With this suggestion the Petitioner does not quarrel. See *Petition*, at pp. 21-24. But to argue, as the Respondent would have to, that a product of natural gas is "oil" would require a line of reasoning so far-fetched that not even the lower Court or the Respondent's witnesses suggested it.

The long and short of the matter is that, in whatever direction the Respondent turns, it assumes the untenable position that natural gas is not crude petroleum but that a product of natural gas is a product of crude petroleum.

Respectfully submitted,

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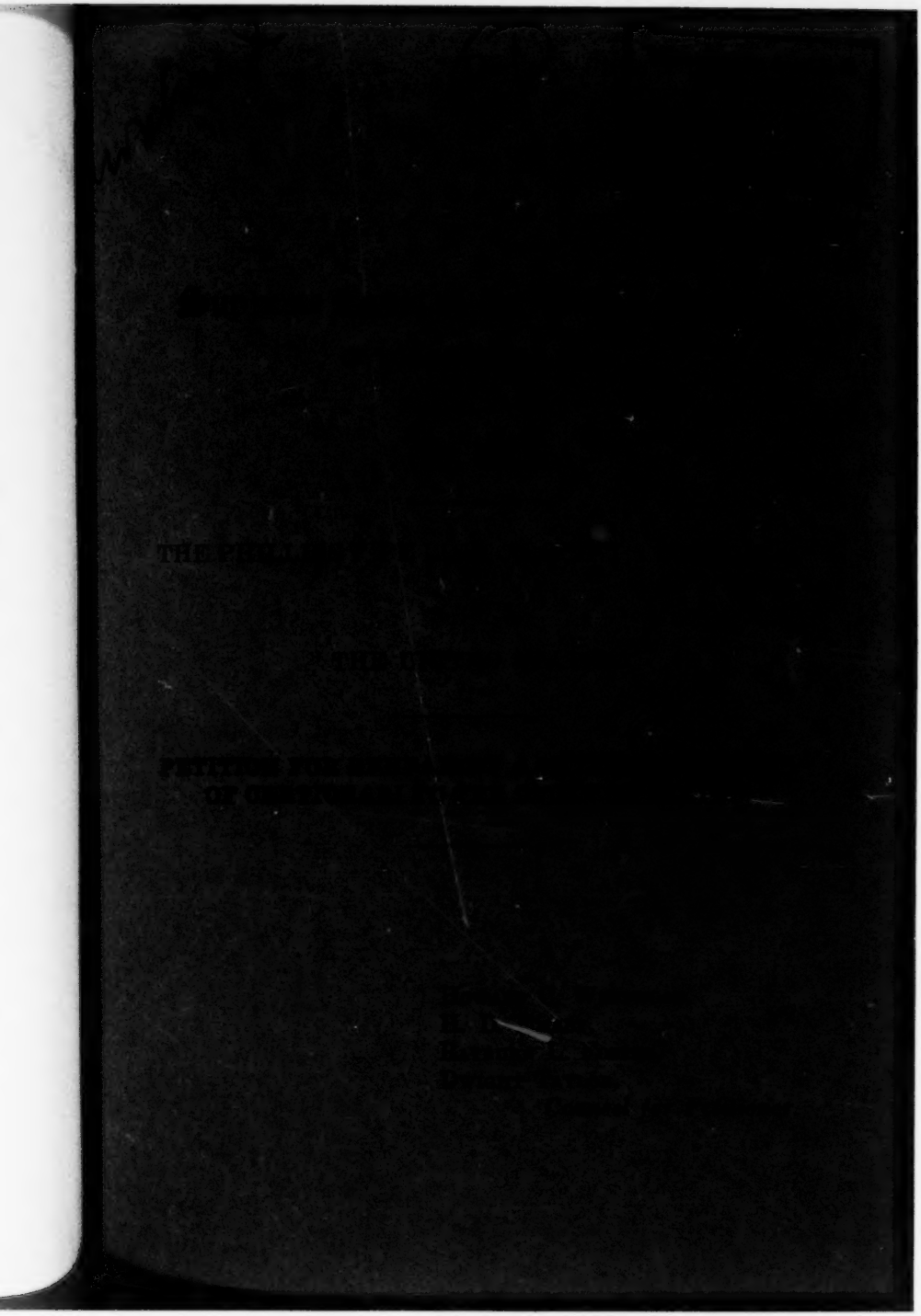

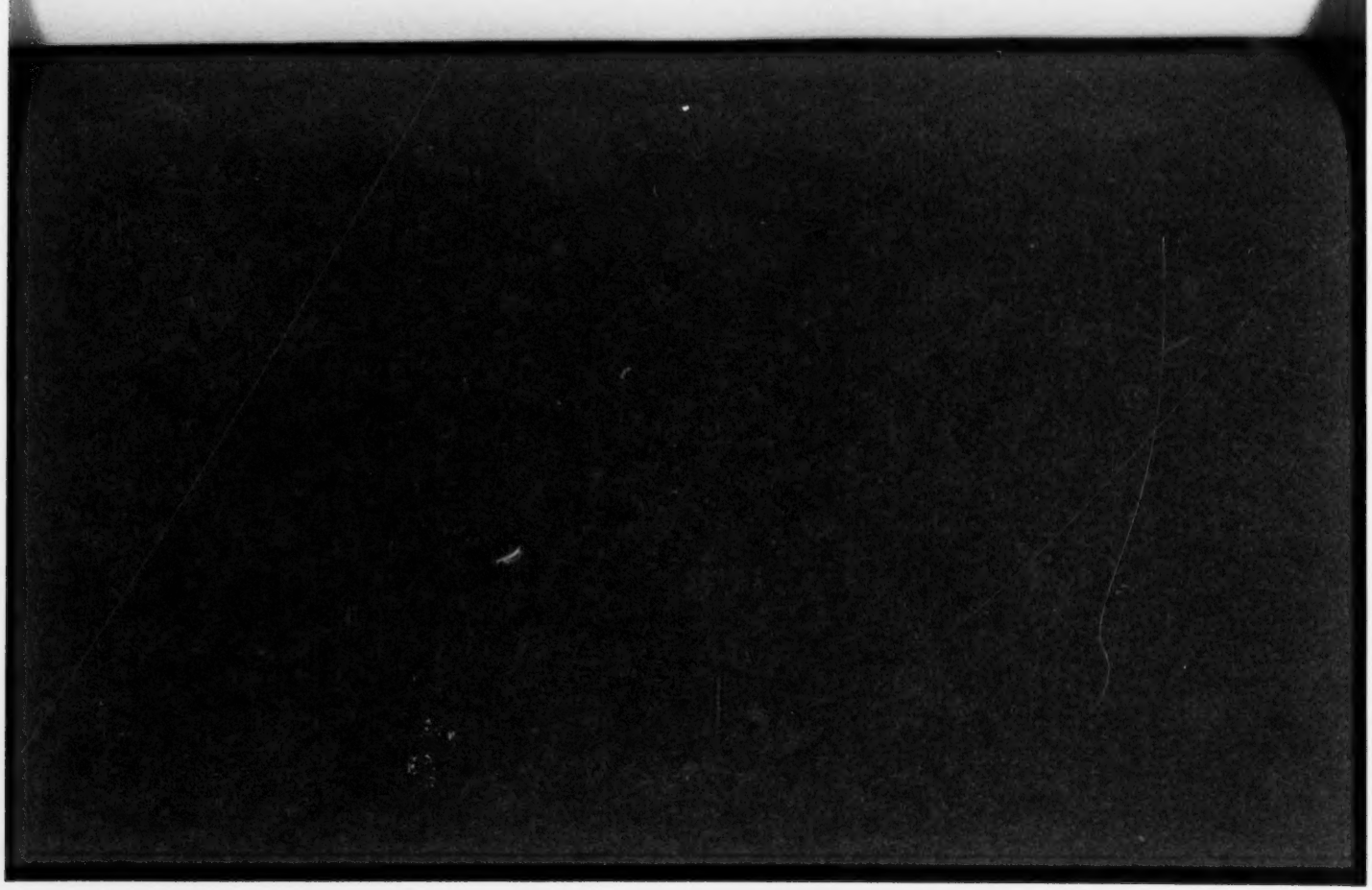

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Supreme Court of the United States

OCTOBER TERM, 1941.

No. 923

THE PHILLIPS PIPE LINE COMPANY, A CORPORATION,
Petitioner,

vs.

THE UNITED STATES.

PETITION FOR REHEARING A PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CLAIMS.

The Petition for Writ of Certiorari herein was denied by an order of this Court dated May 4, 1942. That Petition seeks review of a decision of the Court of Claims.

I.

The Decision of the Court of Claims.

The Petitioner sued to recover taxes it had paid, under protest, on the pipe line shipment of natural gasoline and butane. The lower Court held such shipments taxable under a statute (now Sec. 3460 of the Internal Revenue Code) which provides:

> "There is hereby imposed upon all transportation of crude petroleum and liquid products thereof by pipe line . . . a tax equivalent to 4 percentum of the amount paid . . . for such transportation . . ."

Both natural gasoline and butane are manufactured from natural gas. The question in the case is, then, whether natural gas products are products of "crude petroleum"—that is, whether natural gas is "crude petroleum."

On this question the lower Court found:

> " 'Crude petroleum' is a broader term than 'crude oil' and includes the total hydrocarbon substances in the reservoir. Natural gas, crude oil, asphalt, paraffin wax are all parts of crude petroleum." *Finding* 22, second paragraph (R. 32)

Consequently the lower Court concluded that natural gasoline is a product of crude petroleum. (R. 33) It made no such finding with respect to butane, so one must simply assume that butane was similarly regarded.

The finding just quoted was based upon an alleged scientific definition of "crude petroleum" which, it was said, includes natural gas as well as crude oil. *Finding* 22, first paragraph (R. 32) This definition was adopted despite the fact that the Court also found that among operators and dealers, in statutes and government publications, and in the official specifications adopted by the American Society for Testing Materials (the standard authority in the gas and oil industry), the term "crude petroleum" is understood and used to mean crude oil and *not* to include natural gas. Findings 18 and 19 (R. 29-31)

II.

The Effect of the Lower Court's Decision.

The statute involved taxes the transportation of crude petroleum as well as its liquid products. Since the decision below holds transportation of natural gas products taxable on the ground that natural gas is crude petroleum, the transportation of natural gas itself must be taxable. The statute is not confined to *liquid* crude petroleum and its products—it reaches *all* crude petroleum. If it were confined to *liquid* crude petroleum and its products, then the products of a *gas* would not be taxable and the basis for the lower Court's decision would disappear.

Hence the effect of the decision below is that the taxing statute embraces the whole natural gas industry. Virtually all natural gas is transported by pipe line. See *Petition*, at p. 19.

III.

The Petitioner's Position.

The decision below falls into grave errors, as set forth in the Petition. Among the chief of these is its definition of "crude petroleum" to include natural gas in the face of unusually complete evidence which discloses no such use of the term; rather the term is used in both scientific and common parlance as synonymous with crude oil and as *not* including natural gas. See *Petition*, at pp. 13-15. Indeed, the lower Court's own findings are, as indicated above, that among others than scientists the term does *not* include natural gas. *Findings* 18 and 19 (R. 29-31)

The lower Court based its definition of "crude petroleum" upon arguments made by certain expert witnesses to the effect that, *in their personal opinions*, the term *ought* to be used by people to include natural gas because of asserted scientific considerations bearing on the composition of hydrocarbons. See *Petition*, at pp. 15-17; see *Brief in Opposition*, at p. 9. To adopt such arguments and to reject definitions commonly understood and widely established sharply departs from the necessary judicial assumption that Congressmen speak in the language of ordinary men. *Hale* v. *State Board of Assessment and Review*, 302 U. S. 95, 101 (1937).

How false is the foundation for the lower Court's decision is shown in the very testimony it relies upon. One of these experts, a professor, after elaborating upon the chemistry of hydrocarbon matter, in support of what he conceived to be an "exact" meaning of the term "crude petroleum", was confronted with his own notes which he distributed to his classes. The notes consistently and repeatedly used the terms "petroleum" and "crude petro-

leum" as synonymous with "oil" or "crude oil", *not including gas;* the notes *never* used the term "crude petroleum" to include gas. (R. 619-621) The witness' refuge was to refuse to admit the authenticity of the notes (R. 578-584); they were, however, fully identified otherwise. (R. 617, *et seq.*)

Such evidence as this confirms the necessity for adhering to definitions which are shown to be well established, and for refusing to adopt obscure definitions "scientifically" constructed—the latter are too easily made for the purpose of the case.

The decision below should be reviewed by an appellate court because of its great economic importance.

As already indicated, the effect of the decision is to make the tax applicable to the whole natural gas industry. This industry has become of major importance. In 1939 nearly two and a half trillion cubic feet of natural gas, worth over half a billion dollars, were consumed in this country. See *Petition*, at p. 19.

Yet at no time since the adoption of the pipe line tax here involved, over ten years ago, has the Bureau of Internal Revenue applied it to the transportation of natural gas. (R. 616-1617) And the legislative history of the statute discloses that Congress did not intend that it should apply to natural gas. See *Petition*, at pp. 21-24. This is admitted by the Respondent. See *Brief in Opposition*, at p. 10.

In these circumstances the decision below should receive this Court's consideration.

IV.

The Respondent's Position.

The Brief in Opposition says that the lower Court's adoption of a scientific definition of "crude petroleum" is sound. *Brief in Opposition*, at p. 9. In saying so the Brief cross-refers to its statement of that definition at page 5 of the Brief. That statement is that scientists employ the

term to denote "the entire hydrocarbon content of a reservoir, *natural gas included . . .*"

To this point the Brief is at least consistent in supporting the lower Court. But it then proceeds at once (p. 10) to say that "natural gas *is excluded*" from the statute's words, "crude petroleum".

To say that a product of natural gas is a product of crude petroleum because crude petroleum includes natural gas, and *then* to say that natural gas is *not* included in crude petroleum, on successive pages of the Brief, is extraordinary.

The only apparent reason for this swift *volte-face* is that the Respondent could hardly deny the necessity for appellate review of a decision the effect of which would be to subject natural gas to the pipe line tax. Yet, as the Respondent is at pains to point out, the decision below stands squarely on the proposition that natural gas is "crude petroleum". *It must follow that natural gas would be subject to the tax.*

V.

A Writ of Certiorari Should Be Issued.

The present is no time to deny to the public purse very substantial revenues which are its due. Every cent of revenue which Congress has provided for should be collected.

Yet if the Petition herein is not granted the matter remains in this posture: Natural gasoline is taxed by a decision resting on the proposition that natural gas is crude petroleum and this proposition, the government says, is sound. But the government then holds that the decision is not sufficiently important to review because, it asserts, natural gas is not subject to the tax on crude petroleum. *This amounts to a renunciation of millions of dollars of revenue.*

Whether or not the Petitioner is right in its interpretation of the statute, the government's position now can not possibly be correct.

The matter can be straightened out by reviewing the decision below and determining whether natural gas and its several products are subject to the pipe line tax. The question is of real economic and fiscal importance and should be decided authoritatively.

The present case, for reasons indicated in the Petition (at pp. 9-10), is the appropriate test case; moreover, we are informed that an appeal in the one other similar case, referred to in the Petition (at p. 9), has now been dismissed upon the motion of the appellant in that case. There is but little likelihood that the question will again come before this Court.

For these reasons, and for the reasons heretofore stated in the Petition, the order denying the Petition should be reconsidered and the Petition should be granted.

Respectfully submitted,

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